

### **Remarks**

While the new attorney of record understands that the Examiner is extremely busy, it is respectfully requested that the Examiner return the numerous voicemail messages. The present Application has been in the USPTO for almost five years. The Applicant has made numerous amendments in response to five office actions and at various stages during the prosecution has had allowable subject matter to only have the allowable subject matter withdrawn. Accordingly, it is respectfully requested the Examiner contact the undersigned attorney if any issues remain after review of the instant Response so that the attorney of record may address them in a timely and efficient manner.

The above Amendments and these Remarks are in reply to the outstanding Office Action. Claims 9, 18-19, 21, and 24 are presented herewith for consideration. Claims 20 and 23 have been cancelled and claims 9, 18 and 24 are amended.

Claims 20 and 23 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. While the Applicant's attorney respectfully disagrees, claims 20 and 23 have been cancelled to expedite prosecution.

Claims 9, 19, 21 and 24 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,997,298 (*Nowak*) in view of U.S. Patent No. 4,188,952 (*Loschilov, et al.*) and further in view of U.S. Patent No. 6,149,434 (*Gault*).

Claims 20 and 23 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Nowak*.

Claim 18 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Nowak* in view of *Loschilov, et al.* and further in view of U.S. Patent No. 4,702,697 (*Linkow*).

#### **I. Rejection of Claims 9, 19, 21 and 24 under 35 U.S.C. §103(a)**

Claims 9, 19, 21 and 24 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Nowak* in view of *Loschilov, et al.* and further in view of *Gault*.

Independent claims 9 and 24 have been amended. In particular, claims 9 and 24 have been amended to clearly cite a limitation in the preamble “a first chisel tip having vibration modulated with low frequency pulses” in the body of the claims.

The instant Office Action has not cited where *Nowak*, *Loschilov, et al.* and/or *Gault* singly, or in

combination, disclose among other elements: “a first chisel tip having vibration modulated with low frequency pulses..”

As stated in the instant Specification at paragraphs [0050] and [0051]:

[M]odulation of the vibration of the tip 3, allows the heat that develops on the soft tissue to be minimized because of dissipation of energy due to the vibration of the tip.

The method that provides for use of modulated ultrasound in low frequency bursts with a variable duty cycle, makes it possible to have a hammering effect of the tip, combined with the ultrasonic vibration efficiency which produces a clean, precise cut in mineralized bone.

Claims 19 and 21 depend from independent claim 9 and therefore are patentable for at least the reasons stated above.

It is therefore respectfully requested that the rejection of claims 9, 19, 21 and 24 under 35 U.S.C. §103(a) be withdrawn.

II. Rejection of Claims 20 and 23 under 35 U.S.C. §103(a)

Claims 20 and 23 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Nowak*.

Claims 20 and 23 have been cancelled; therefore, the rejection of claims 20 and 23 under 35 U.S.C. §103(a) is considered moot.

III. Rejection of Claim 18 under 35 U.S.C. §103(a)

Claim 18 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Nowak* in view of *Loschilov, et al.* and further in view of *Linkow*.

Claim 18 has been amended similar to claims 9 and 21 and therefore are patentable for at least the reasons stated above in regard to claims 9 and 21.

In particular, the instant Office Action has not cited where *Nowak*, *Loschilov, et al.* and/or *Linkow* singly, or in combination, disclose among other elements: “a first chisel tip having vibration modulated with low frequency pulses...”

It is therefore respectfully requested that the rejection of claim 18 under 35 U.S.C. §103(a) be withdrawn.

IV. Conclusion

Based on the above amendments and these remarks, reconsideration of claims 9, 18-19, 21, and 24 is respectfully requested.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 501826 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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